

ELECTRAK INTERNATIONAL LIMITED

CONDITIONS OF QUOTATION AND SUPPLY

1. Interpretation

In these conditions:-

- "Company" means Electrak International Limited registered in the United Kingdom under number 1248359;
- "Conditions" means the standard conditions of (quotation and) supply set out in this document and (unless the context otherwise requires) includes any special conditions agreed in writing between the Company and the Purchaser;
- "Contract" means the contract for the purchase and sale of the Goods and/or the Services;
- "Goods" means any product sold or system designed and sold by the Company specified in the accepted quotation or order (as the case may be) (including any part or parts thereof) and any other goods which the Company is to supply in accordance with these Conditions;
- "Intellectual Property Rights" means all copyright, design rights (registered or unregistered), patents, trade marks and any other rights in the nature of intellectual property rights;
- "Purchaser" means the person firm or company who requests a quotation from the Company for the sale of the Goods and/or Services or who places an order with the Company for the purchase of the Goods and whose order for the Goods is accepted by the Company or who requests the Company to carry out the Services;
- "Services" means all construction, installation, maintenance, commissioning and other services which the Company agrees to perform for the Purchaser in connection with the Contract; and
- "Writing" includes telex, cable, facsimile transmission and comparable means of communication.

2. Quotation and Order

Upon request in writing from the Purchaser the Company shall supply a written quotation for the sale and supply of the Goods and/or the Services. The Contract is formed by the Company's acceptance of the Purchaser's offer in response to the Company's quotation or by the Company's acceptance of the Purchaser's order for the Goods or request to carry out the Services.

3. Formation of Contracts

- All contracts of quotation and supply made with the Company shall be deemed to incorporate these Conditions which shall override and take precedence over any other terms or conditions in any document or other communication used by the Purchaser in concluding this or any other contract with the Company. No variation or addition to these Conditions shall form part of any contract unless made or specifically accepted by an authorised officer of the Company in writing.
- The application of the Uniform Laws on International Sales shall be excluded. The construction validity and performance of all Contracts shall be governed by the laws of England and any claim or dispute arising therefrom shall be subject to the exclusive jurisdiction of and be determined by the English Courts.

4. Prices

Unless otherwise expressly stated in writing by the Company orders are accepted on the basis that:-

- the price stated is the net price of the Goods and/or the Services for delivery in accordance with the Contract;
- the price stated is exclusive of Value Added Tax which will be charged at the rate and in the manner prescribed by law;
- the Company is entitled without prior notice to adjust the price stated to take account of any change in specification made at the request of the purchaser or any alteration before the date of delivery or performance in the cost to the Company of labour, materials, sub-contracted services or import or export duties or tariffs or transport or any other matter beyond the control of the Company which results in an increase in costs to the Company;
- unless otherwise expressly stated in writing by the Company, the Company will charge for carriage, insurance during carriage and packing and where such charges are stated separately from the price they will nevertheless be payable by the Purchaser at the same time as if they formed part of the price and shall be treated as such.

5. Payment

- Unless otherwise expressly stated in writing by the Company prices are due and payable in United Kingdom sterling within 30 days of the date of the invoice.
- Payment shall be made without deduction or set-off.
- If the Purchaser shall fail to make payment in full in accordance with Condition 5(a) above, then (without prejudice to any other rights of the Company) the Purchaser shall without any need for the Company to give notice become liable to pay to the Company interest on the amount for the time being unpaid at the rate which is eight percent per annum above the UK Clearing Bank Base Lending Rate calculated from the date of due payment until the date of actual payment whether before or after any judgement; and-
 - the Company shall be entitled to suspend all or any deliveries and/or performance to be made under this or any other contract with the Purchaser and all monies under this or any other contract then outstanding shall immediately become due and payable and the Purchaser shall not in any respect be released from its obligations to the Company under this or any such other contract; or
 - instead of suspension in accordance with subparagraph (c)(i) above, the Company shall be entitled to terminate this Contract and/or any other contract with the Purchaser in accordance with Condition 18 below and to claim damages from the Purchaser for breach; and
 - without prejudice to any other remedies as detailed in subparagraphs (c)(i) and ii above, the Company may in addition set off any sums it owes to the Purchaser on any other contract it has with the Purchaser whether such sums are liquidated or unliquidated as at the date of the Purchaser's breach of these Conditions.
- Time of payment is of the essence of the Contract.

6. Cancellation

- If the Purchaser cancels the order, whether in writing or orally, prior to completion of delivery of the Goods;
 - the Company may treat the Contract as terminated forthwith in which event the Company may, in its absolute discretion, have recourse to any rights and remedies available under Condition 18; and
 - the Company shall be entitled to sell the Goods or the balance of the Goods still in its possession and to seek to obtain the best reasonable price for such Goods and to retain any such recovery made.
- If cancellation or return of the Goods is not due to any loss or damage or any fault of the Company, the Company may levy a handling charge of at least 25% of the value of the returned Goods to cover costs of re-stocking, transport and administration. In any event, Goods that are specialised or modified in any way are not eligible for return or credit.
- Insofar as the Company has been unable to sell the Goods or to the extent that it has been unable to sell the balance of the Goods, the Company shall submit written details of the costs of purchase and/or manufacture of the Goods to the Purchaser, including details of any recovery made by way of re-sale, and the balance of the costs of purchase and/or manufacture shall be recoverable from the Purchaser forthwith as a debt.

7. Despatch and Delivery

- Unless otherwise expressly stated in writing by the Company, the Company will arrange carriage of Goods within the mainland of the United Kingdom and the Purchaser will arrange collection and carriage of Goods ordered for delivery elsewhere. The Company shall only be obliged to deliver Goods to such address as it may have expressly agreed in writing.
- The Purchaser shall sign the delivery note accompanying the Goods at the time of delivery.
- If the Goods and/or Services are not delivered or performed or upon delivery or performance are found to be damaged, short or defective the liability of the Company for any loss of expense of any nature thereby occasioned shall be limited to replacement of damaged Goods and/or Services and/or completion of the delivery of the Goods or the outstanding Goods or performance of the Services. The Company shall not be liable for any further or consequential loss and the Company shall not in any event be liable under this Condition 7(c) to any extent unless:-
 - the Purchaser gives written notice to the Company and to the carrier on or before signing the delivery note accompanying the Goods and/or Services; and/or
 - in the case of short or damaged delivery or defective performance the Purchaser gives the Company or its nominated representative(s) a reasonable opportunity to inspect the Goods and/or Services concerned in the state and condition and location in which they were delivered or performed; and/or
 - in the case of non-delivery or non-performance the Purchaser gives the Company written notice of such non-delivery or non-performance within 14 days of the expected date of delivery.
- Any stiltage pallets or other similar items on which the Goods are delivered shall at all times remain the exclusive property of the Company which shall be allowed to collect them from the Purchaser. In the event of the Purchaser failing to deliver any such items up to the Company in good condition upon being requested to do so the Company may charge the Purchaser for them.
- The risk in the Goods sold shall pass to the Purchaser upon their delivery to the Purchaser if the Company has arranged carriage or upon their transfer at the Company's premises onto the carrier's or Purchaser's transport if the Purchaser has arranged carriage.
- The Purchaser shall keep the Goods fully insured in their full replacement value against all risks prudently insured against at least throughout the period between the risk therein passing to the Purchaser and the property therein ceasing to remain with the Company.
- Any dates quoted for delivery of the Goods and/or performance of the Services are approximate only and the Company shall not be liable for any delay in delivery or performance howsoever caused. Time for delivery or performance shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered and/or the Services may be performed by the Company prior to the quoted date if advance notice is given to the Purchaser.
- Where goods are to be delivered and/or the Services are to be performed in instalments, each such delivery and/or performance shall constitute a separate contract and failure by the Company to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.
- If the Purchaser fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery unless the cause is beyond the Purchaser's reasonable control or is due to the Company's fault then without prejudice to any other right or remedy available to the Company the Company may:-
 - store the Goods until actual delivery and charge the Purchaser all costs (including insurance) of storage incurred; or
 - sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.

8. Acceptance

Once the Purchaser has taken delivery of the Goods and/or Services in accordance with these Conditions the Purchaser will be deemed to have inspected the Goods and/or Services and to have intimated to the Company acceptance of them.

9. Property

- Notwithstanding delivery of the Goods or of any documents representing the Goods, the property in the Goods (and each part of the Goods) shall remain with the Company until the Company has received cash or cleared funds in full payment of the price of Goods and all other Goods agreed to be sold by the Company to the Purchaser under this or any other contract.
- Until such time as the property in the Goods passes to the Purchaser the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property.
- Notwithstanding that the property in the Goods has not passed to the Purchaser upon receipt of the Goods the Purchaser shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Company for the

proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties and in the case of tangible proceeds properly stored protected and insured.

d) The Purchaser shall not be entitled to plead or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Purchaser does so all monies owing by the Purchaser to the Company under this or any other contract shall without prejudice to any other right or remedy of the Company forthwith become due and payable.

10. General Liabilities

- All warranties, conditions or other terms implied by statute common law trade usage or otherwise are excluded to the fullest extent permitted by law.
- The Company warrants that all Goods and/or Services supplied are at the time of delivery free from defects in materials and workmanship but the Company's liability under this warranty shall be limited to either:-
 - making good without charge by repair or replacement or at the absolute discretion of the Company; or
 - refunding the purchase price paid by the Purchaser in respect of any Goods and/or Services which the Company is satisfied were defective in material or workmanship at the time of delivery or performance provided that:-
 - notice has been given of such defect within 14 days of the date when the Purchaser has inspected or is deemed to have inspected the Goods and/or Services (whichever is the earlier) and in any event within 6 calendar months after the date of delivery or performance; and
 - the Goods are not in any worse condition than when delivered; and
 - iii. this warranty does not extend to any damage which would have been obvious at the time of delivery or performance and which was not notified in writing in accordance with Condition 7(c) above; and
 - iv. this warranty does not extend to defects arising through fair wear and tear, any misuse of the Goods by the Purchaser or any damage caused by the Purchaser failing to follow all instructions issued.
- The liability of the Company for any loss injury or damage of any nature whatsoever (other than personal injury or death caused by the negligence of the Company) arising out of or in connection with any Goods and/or Services supplied under this Contract shall be limited to and not exceed a sum equal to the purchase price of those Goods and/or Services in respect of which any claim arises. The Company shall incur no liability whether for misrepresentation, breach of implied or express warranty or condition or term of breach of duty at common law for any consequential economic loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) arising from or relating to the supply of the Goods or their use or re-sale by the Purchaser and/or the performance of the Services.
- The Purchaser shall not rely upon any representation concerning any Goods and/or Services unless the same shall have been made by the Company in writing.
- The complete or partial invalidity or unenforceability of any provision of these Conditions shall not affect the validity or enforceability of such provision for any other purpose or any of the remaining provisions.

11. Design Variations and Purchaser's Modifications

- Any variations in the design construction components colour finish or other features of the Goods or in the materials used in the manufacture of the Goods supplied differing from similar Goods previously sold or offered for sale by the Company or in the Company's trade literature shall not affect the Purchaser's obligations to accept and pay for the Goods or give rise to any liability on the Company, provided that the variations in question have not resulted in a substantial reduction in the overall quality of the Goods.
- The Purchaser shall not make any modification or alterations to the design or materials comprising the Goods without the prior written consent of the Company.
- If the Company agrees to modify its standard product or manufacture a product to the Purchaser's design or specification the Purchaser shall indemnify the Company against all actions costs (including the costs of defending any legal proceedings) claims damages or any other expenses whatsoever which may arise by virtue of:-
 - any defect in any such product save where such defect is not attributable to the Purchaser's design or specification; or
 - ii. any alleged infringement by such product of any Intellectual Property Rights.

12. Intellectual Property

- All Intellectual Property Rights in the Goods and/or the Services shall at all times remain vested in the Company and the Purchaser shall not reproduce or use all or any of them without the Company's prior written consent.
- The Purchaser will indemnify the Company against any and all damages, penalties, costs, losses and expenses suffered by the Company or for which it may become liable in respect of the infringement of any Intellectual Property Right arising out of the Company's manufacture of Goods in accordance with any specification, design, drawings, or other data supplied by the Purchaser or its servants or agents.

13. Use of the Goods

- The Purchaser shall be solely responsible for and shall keep the Company indemnified against any loss liability or expense arising directly or indirectly from the use and/or resale of the Goods:-
 - other than in accordance with the Company's installation or operating instructions; and/or
 - i. in a country where the Goods do not comply with any enforceable restrictions or requirements.
- The Purchaser warrants that the Goods will not be sold distributed or otherwise dealt with in any way without having attached to them all such warnings notices statements or markings of whatsoever nature (in all relevant languages) as may be necessary or appropriate to preclude the making of any claim by any person who may use or be affected by the Goods. The Purchaser shall keep the Company indemnified against any loss liability or expense arising directly or indirectly from the breach of this warranty.

14. Product Safety

- The Purchaser undertakes to comply with the General Product Safety Regulations 1994 if and to the extent that they are applicable to the Goods.
- The Purchaser undertakes to indemnify the Company in respect of any and all claims arising from the Goods being unsafe as a result of the Purchaser's activities.
- The Purchaser agrees to pass on any information on the risks of the Goods and to co-operate in any action the Company may decide to take to avoid those risks.
- The Purchaser agrees to keep records of the customers to whom the Goods are sold and to provide the Company with the relevant information should the Company so request.

15. Force Majeure

- If the performance of the Company's obligations under the Contract is in any way adversely affected by any war strike lock-out sit-in trade dispute flood accident to plant or machinery shortage of any material or labour or by reason of the Purchaser failing to furnish any necessary information or instructions or any other cause whatsoever beyond the Company's control the Company may give notice in writing to the Purchaser either:-
 - cancelling forthwith any outstanding obligations of the Company to deliver any Goods and/or perform any Services under the Contract; or
 - ii. extending the time for delivery of the Goods and/or performance of the Services outstanding under the Contract.
- If the Company gives notice under Condition 15(a)(i) above there shall be no liability to the Purchaser for any damages or loss or consequential loss of whatsoever nature and the Purchaser shall remain obliged to pay for any Goods delivered and/or Services performed.
- If the Company gives notice under Condition 15(a)(ii) above then the time for delivery shall be extended accordingly.

16. Assignment

The Purchaser shall not assign the benefit of any contract with the Company or any rights hereunder in whole or in part without the prior written consent of the Company.

17. Third Party Rights

These Conditions do not create, confer or purport to confer any benefit or right enforceable by any person not a party to it. The Contracts (Rights of Third Parties) Act 1999 is excluded.

18. Waiver

- Failure by the Company to enforce any of these Conditions will not be construed as a waiver of any of the Company's rights hereunder.
- No waiver by the Company of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

19. Default

- The Company may by notice in writing to the Purchaser terminate any contract forthwith if:-
 - the Purchaser shall commit any breach of any of the Conditions (including without limitation Conditions concerning the time for payment of the purchase price) of this or any other contract with the Company and on its part to be observed or performed provided that if such a breach is remediable the Company has previously given to the Purchaser notice thereof and the same has not been remedied within seven days thereafter; or
 - ii. the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) dies or becomes bankrupt or (being a company) goes into receivership or liquidation (otherwise than for the purposes of amalgamation or reconstruction) or if any distress or execution is levied upon any of its property or assets or it permits any judgement against it to remain unsatisfied for seven days.
- In the event of any such termination:-
 - the Purchaser's right to use or trade in any Goods not yet paid for is immediately suspended;
 - ii. the Purchaser shall forthwith on demand deliver to the Company any Goods the property in which remains with the Company and in default thereof the Company shall be entitled to repossess the same and for such purpose the Purchaser shall afford it access to any premises where such Goods may then be without the Company being liable for any damage caused thereby and the Purchaser shall indemnify the Company from and against any liability to any third party in respect of any such damage and from and against all actions proceedings claims demands costs damages and expenses howsoever arising; and
 - iii. the Company shall be entitled by notice in writing to the Purchaser to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Purchaser to the Company under this or any other contract and all such amounts shall bear interest at the rate set out in Condition 5(c) above calculated from the date of the notice until actual payment as well as after any judgement.
- The provision of Conditions 18(a) and 18(b) above and the exercise by the Company of its rights thereunder are without prejudice to any other rights of the Company.

20. Freedom of Information

If the Purchaser (being a public authority) receives an information request under the Freedom of Information Act 2000 relating to any information held regarding the Company, the Purchaser shall consult with the Company prior to releasing any such information.

21. Headings

The headings used in these Conditions are for convenience only and shall not affect the construction thereof.

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